HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.
C-482 No. 01 of 2005
Sri Atul Bhatia
Vs.
State of Uttaranchal and another.

Approved for reporting.

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~~Not approved for reporting~~

Date of decision 18.12.2006.

Initial of Judge

HIGH COURT OF UTTARANCHAL AT NAINITAL

C-482 NO. 01 OF 2005

Sri Atul Bhatia,
S/o Shri Subhash Bhatia,
R/o Terrace IV, Oberai Apartments,
Shyam Nath Marg,
Near ISBT, Kashmiri Gate,
Delhi. .....Applicant.

Versus

1. State of Uttaranchal.
2. M/s Vigyan Lime Industries, G-37, Race Course, Dehradun, through its alleged Power of Attorney Shri Sunil Kumar Gupta, S/o late Shri Vigyan Prakash, R/o G-37, Race Course, Dehradun.

.....Opposite Parties.

&

C-482 NO. 02 OF 2005

1. Shri Subhash Bhatia,
   S/o late Shri M.R. Bhatia,
   R/o Terrace IV, Oberai Apartments,
   Kashmiri Nath Marg,
   Kashmiri Gate,
   Delhi.
2. M/s Brite Paint & Chemicals,
   162/2-A, Site 4, Industrial Area,
   Sahibabad,
   District-Ghaziabad (U.P.)
   Through its Proprietor Shri Subhash Bhatia.

.....Applicants.

Versus

1. State of Uttaranchal.
2. M/s Vigyan Lime Industries,
G-37, Race Course, Dehradun,
through its alleged Power of Attorney
Shri Sunil Kumar Gupta,
S/o late Shri Vigyan Prakash,
R/o G-37, Race Course, Dehradun.

..... Opposite Parties.

Hon'ble Rajesh Tandon, J.

Since both the matters arise out of the same dispute, therefore, both are decided together,

2. Heard Ms. Prabha Noliyal, counsel for the applicants, Sri S.K. Jain, Sri Har Pal Singh & B.S. Negi, counsel for the opposite party no. 2 and A.G.A. for the State.

3. By the application No. 1 of 2005 filed under Sections 482 of the Code of Criminal Procedure, the applicant has prayed for quashing the complaint Case No. 1695 of 2002 *M/s Vigyan Lime Industries Vs. M/s Brite Paint & Chemicals & Ors* pending in the Court of Special Judicial Magistrate-I, Dehradun under Section 138 of Negotiable Instruments Act, 1881 (Police Station – Kotwali), Dehradun as well as summoning order dated 20.12.2002 by which the applicants in Application No. 2 of 2005 and 1 of 2005 has been summoned.

4. By the application No. 2 of 2005 filed under Sections 482 of the Code of Criminal Procedure, the applicants have prayed for the following relief:

> *"It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be leased to allow this application and quash the aforesaid criminal complaint and set aside the following impugned orders and/or pass such other and further orders which this Hon'ble Court may deem fit and proper under the facts and circumstances of the case, failing which the applicants shall suffer irreparable loss and injury:*
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> *(i) Summoning order dated 20.12.2002 passed by the learned Chief Judicial Magistrate, Dehradun in Criminal Complainat Case No. 2566 of 2002 (New No. 178 of 2004), M/s Vigyan Lime Industries V/s M/s Brite Paint & Chemicals, under Section 138 of the Negotiable Instruments Act, 1881.*
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> *(ii) Order dated 18.3.2004 passed by the transferee Court of the learned Judicial Magistrate (CBI), Dehradun, whereby the learned Magistrate has rejected the application of the applicants against the summoning order and also refused to recall the summoning order and further refused to quash the proceedings of the aforesaid Criminal Complaint.*
>
> *(iii) Order dated 8.12.2004 passed by the learned Additional Sessions*

Judge/FTC-II, Dehradun in Criminal Revision No. 43 of 2004 M/s Brite Paint & Chemicals Vs. M/s Vigyan Lime Industries, whereby the learned Additional Sessions Judge has refused to set aside the aforesaid orders dated 20.12.2002 and 18.3.2004 passed by the concerned Magistrate.

It is further prayed that this Hon'ble Court may kindly be pleased to stay the Criminal proceedings against the applicants of the Criminal Complaint Case No. 2566 of 2002 (New No. 178 of 2004), M/s Vigyan Lime Industries Vs. M/s Brite Paint & Chemicals & others, now pending in the Court of Judicial Magistrate (CBI), Dehradun under Section 138 of the Negotiable Instruments Act, 1881, (Police Station Kotwali), Dehradun during pendency of the present application before the Hon'ble Court, otherwise the applicants shall suffer irreparable loss and injury."

3. Briefly stated, two complaints were lodged (first on 8th April, 2002 and Second on 20th November, 2002) by the opposite party no. 2-M/s Vigyan Lime Industries against M/s Brite Paints and Chemicals Ltd. alleging therein that the complainant deals with the business of supply of lime and Smt. Indu Sunil is the proprietor of the said company and Smt. Indu Sunil has authorized Sri Sunil Kumar Gupta to file complaint, who is looking after the business of the said company.

4. It is stated in the complaint No. 1695 of 2002 that Shri Subhash Bhatia is the proprietor of M/s Brite Paint and Chemicals and Sri Atul Bhatia is the Manager of the said firm. Both are in charge of and responsible for the conduct of the M/s Brite Paint & Chemicals. It has been stated that the accused have obtained supply of lime from the complainant and a sum of over Rs. 14 lacs is due on the complainant. In the complaint, the complainant has claimed relief with regard to the cheque bearing No. 066748 dated 19.01.2002 for Rs. 38,597.00 drawn on Bank of India, Janpath Branch, New Delhi-110 001, which has issued in favour of the complainant and the cheque was signed by Sri Subhash Bhatia, but when the cheque was presented before the concerned bank, the same were dishonoured and the endorsement was made **"Payment stopped by Drawer"** and the said cheque were returned to the Ganga Yamuna Gramin Bank, Dehradun along with memo dated 29.01.2002.

5. Thereafter, Ganga Yamuna Gramin Bank, Dehradun returned the said cheque along with its memo dated 11.02.2002 to the complainant. The complainant intimated the firm about the fate of the said cheque vide notice dated 23.02.2002 sent by registered A/D post registered on 25.02.2002 and demanded the payment of the amount of said cheque within fifteen days of the receipt of said notice, but the same was not done.

6. It is stated in the complaint No. 2566 of 2002, the accused have obtained supply of lime from the complainant and a sum of over Rs. 12 lacs is due on the complainant. In the complaint, the complainant has

claimed relief with regard to three cheques bearing Nos. 914454 dated 11/05/2002 for Rs., 35,999.60, No. 914455 dated 16/05/2002 for Rs. 36,238.80 and No. 914460 dated 24/06/2002 for Rs. 35,880.00 drawn upon Vijaya Bank, Bartakhamba Road, New Delhi -110 001 in favour of complainant at Dehradun and the cheques were signed by Sri Subhash Bhatia, but when the cheques were presented before the concerned bank, the same were dishonoured and the endorsement was made **"Insufficient Funds"** and the said cheques were returned to the Ganga Yamuna Gramin Bank, Dehradun along with memo dated 06.09.2002.

7. Thereafter, Ganga Yamuna Gramin Bank, Dehradun returned the said cheque along with its memo dated 23.02.2002 to the complaint. The complainant intimated the firm about the fate of the said cheque vide notice dated 7.10.2002 sent by the registered A/D post registered on 25.2.2002 and demanded the payment of the amount of said cheques within fifteen days of the receipt of said notice, but the same was not done.

8. After the statements have been recorded under Section 200 and 202 of the Code of Criminal Procedure, summoning order were issued by the Magistrate concerned against the applicants and hence the present applications have been filed under Section 482 of the Code of Criminal Procedure.

9. Ms. Prabha Noliyal, counsel for the applicants has submitted the following two arguments:

I) The applicants are ready to pay the amount of all the cheques and as such parties may be directed to compromise the matter.

II) Sri Atul Bhatia, who is the General Manager has no concern with the present complaint under Section 138 of the Negotiable Instruments Act."

10. So far as the first contention of the counsel for the applicants is concerned, the complainant has refused to accept the amount on the ground that a civil suit is already pending between the parties, where he has claimed other amount of which he is entitled in business transaction.

11. After considering the evidence on the record, it appears that total four cheques are involved in Complaint Case No. 1695 of 2002 and Complaint Case No. 2566 of 2002 under Section 138 of the Negotiable Instruments Act and the other business transaction for which the civil suit has been filed, has no concern with the present complaint under Section 138 of the Negotiable Instruments Act,

12. The Judicial Magistrate shall first try to get the matter reconciled between the parties. In case he fails, he shall proceed with the complaint and shall decide the same in accordance with law.

13. So far as the second contention of the counsel for the applicant is concerned, the Presiding Officer shall consider the arguments of the applicant, in case after looking to the documents on record, no case is made out

against Sri Atul Bhatia, necessary order shall be passed in this regard.

14. Subject to aforesaid observations, both the applications filed under Section 482 of the Code of Criminal Procedure are disposed of.

(Rajesh Tandon, J.)

18.12.2006.
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